4-322

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 195.

HARVEY N. HILL, IMPLEADED WITH JAMES LEUFESTEY, PLAINTIFF IN ERROR,

vs.

WILLIAM F. THOMPSON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

FILED OCTOBER 19, 1874.

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UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the eastern district of Michigan, greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court before you, between Harvey N. Hill, impleaded with James Leufestey and William F. Thompson, a manifest error hath happened, to the great damage of the said Harvey N. Hill, as by his complaint appears:

We, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then,
2 under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington, on the first Monday in October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court, the 4th day of May, in the year of our Lord one thousand eight hundred and seventy-four.

[SEAL.] ADDISON MANDELL, *Clerk.*

3, 4 (Indorsed:) 5337. U. S. Supreme Court. Harvey N. Hill, impleaded with, &c., plff. in error, vs. William F. Thompson, deft. in error. Writ of error. Filed in clerk's office June 19th, 1874. A. Mandell, clk.

5 UNITED STATES OF AMERICA, *ss:*

To WILLIAM F. THOMPSON, greeting:

You are cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Michigan, wherein Harvey N. Hill, impleaded with James Leufestey, is plaintiff, and you are defendant, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

6 Witness the honorable John W. Longyear, one of the judges of the circuit court of the United States for the eastern district of Michigan, the 17th day of June, in the year of our Lord one thousand eight hundred and seventy-four.

JNO. W. LONGYEAR,
District Judge.

Supreme Court of the United States.

HARVEY N. HILL, IMPLEADED WITH JAMES Leufestey, plff. in error,
vs.
WILLIAM F. THOMPSON, DEFT. IN ERROR.

7 STATE OF MICHIGAN,
Eastern District of Michigan, ss:

H. C. Wisner, being duly sworn, says that he served a copy of the

foregoing citation upon said deft. in error, on the 19th day of June, A. D. 1874, at the city of Detroit, by handing the same personally to Edward C. Walker, esq., one of the members of the firm of Walker & Kent, the attorneys for said deft. in error.

H. C. WISNER.

Subscribed & sworn to before me this 19th day of June, A. D. 1874.
A. MANDELL,
U. S. Commissioner Eastern Dist. of Mich.

8 (Indorsed:) 5337. U. S. Supreme Court. Harvey H. Hill, impleaded with James Leufestey, plff. in error, vs. William F. Thompson, deft. in error. Citation. Filed in clerk's office June 19, 1874. A. Mandell, clk.

9 *Creditor's petition.*

To the honorable John W. Longyear, judge of the district court of the United States for the eastern district of Michigan:

The petition of William F. Thompson, of the city of Detroit, Wayne County, Michigan, respectfully shows:

That he is creditor of James Leufesty and Harvey N. Hill, who are partners doing business under the firm-name of Leufesty and Hill, and who, for the six months next preceding the filing of this petition, have resided, said Hill in the city of Pontiac, and said Leufesty in the city of Detroit, within the district aforesaid, and have carried on business for said six months in said city of Detroit.

That your petitioner's demand is provable against the said Leufesty & Hill, in accordance with the provisions of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867.

That he believes that said Leufesty and Hill owe debts to an amount exceeding the sum of three hundred dollars, ($300.00;) that your
10 petitioner's demand exceeds the amount of two hundred and fifty dollars, ($250.00,) and that the nature of your petitioner's demand against the said Leufesty and Hill, in part, is as follows:

Two certain promissory notes, each signed by said Leufesty and Hill, and payable to the order of C. E. Letts and Co., which have been duly endorsed and delivered to your petitioner by said C. E. Letts & Co., of which the following are copies:

"$175.92.] DETROIT, MICH., *Dec. 11th*, 1873.

"Two months after date, we promise to pay to the order of C. E Letts & Co., one hundred seventy-five and $\frac{92}{100}$ dollars, at Merchants and Mfts.' Bank. Value received.

"LEUFESTY AND HILL."

"DETROIT, *Jan'y 14th*, 1874.

"Twenty days after date, we promise to pay to Messrs. C. E. Letts & Co., or order, one hundred fifty-one & $\frac{51}{100}$ dollars, at Merchants & Mfts.' Bank. Value received.

"$151.50.] LEUFESTY & HILL."

And your petitioner further represents that within six calendar months next preceding the date of this petition, the said Leufesty
11 and Hill did commit an act of bankruptcy within the meaning of

said act, to wit, in that the said Leufesty & Hill, being manufacturers, have suspended and not resumed payment of their commercial paper within a period of fourteen days.

The commercial paper the payment of which they have thus suspended and not resumed during fourteen days is the two promissory notes of which copies are given above.

These notes were given for coal to be used in manufacturing business.

At the time said notes respectively came due, and for more than fourteen days thereafter, they were the property of said C. E. Letts & Co.; since that time they have been purchased by your petitioner, and they are still due and unpaid.

Wherefore your petitioner prays that they, the said Leufesty & Hill may be declared bankrupts, and that a warrant may be issued to take possession of their estate, both joint and several, and that the same may be distributed according to law, and that such further proceedings may be had thereon as the law in such case prescribes.

(Signed) W. F. THOMPSON.

WALKER & KENT,
Attys. for Petitioners.

12 UNITED STATES OF AMERICA,
Eastern District of Michigan, ss:

I, William Thompson, the petitioner above named, do hereby make solemn oath that the statements contained in the foregoing petition subscribed by me are true, so far as the same are stated of my own knowledge, and that those matters which are stated therein on information and belief are true, according to the best of my knowledge, information, and belief.

(Signed) W. F. THOMPSON.

Sworn to and subscribed before me, a United States commissioner for eastern district of Michigan, this 24th day of March, A. D. 1874.

(Signed) JNO. GRAVES,
U. S. Commr. East. Dist. Mich.

(Endorsed:) Filed March 24th, 1874, at 3 p. m. (Signed) Jno. Graves, dep'y clerk.

13 *Proof of claim.*

In the district court of the United States for the eastern district of Michigan.

IN THE MATTER OF JAMES LEUFESTY & HARVEY N. Hill, partners, doing business under the firm-name of Leufesty and Hill, against whom a petition for adjudication of bankruptcy was filed on the day of March, A. D. 1874.	At Detroit, in said district, on the day of March, A. D. 1874, before me.

EASTERN DISTRICT OF MICHIGAN, *ss:*

William F. Thompson, of Detroit, in the county of Wayne, and State of Michigan, being duly sworn and examined at the time and place above mentioned, upon his oath says that the said Leufesty and Hill were, on and before the twenty-third day of March, A. D. 1874, and still are justly and truly indebted unto this deponent in the sum of

three hundred twenty-seven and forty-two hundreths dollars, besides interest, and that said indebtedness consists of two promissory
14 notes, of which the following are copies, and which have been duly endorsed by the payees and delivered to your petitioners:

$175.92.] DETROIT, *Dec.* 11*th*, 1873.

Two months after date, we promise to pay to the order of C. E. Letts & Co., one hundred seventy-five and $\frac{92}{100}$ dollars at Merchants and Mfts.' Bank, value received.

(Signed) LEUFESTY & HILL.

(Written across the face:) C. E. Letts & Co.

" DETROIT, *Jan'y* 14*th*, 1874.

Twenty days after date, we promise to pay to Mess. C. E. Letts & Co. or order, one hundred fifty-one and $\frac{50}{100}$ dollars at Merchants and Mfts.' Bank, value received.

$151.50.] (S'gn'd) LEUFESTY & HILL.

(Signed) W. F. THOMPSON.

(Written across the face:) C. E. Letts & Co.

On the day of March, before me personally appeared William F. Thompson, the above-named petitioning creditor, and was duly sworn to the truth of the foregoing statement.

(Signed) JOHN GRAVES,
U. S. Commr. East. Dist. Mich.

(Endorsed:) Filed March 24th, 1874, at 3 p. m. (Signed) Jno. Graves, depy. clerk.

15 *Proof of act of bankruptcy.*

In the district court of the United States for the eastern district of Michigan.

IN THE MATTER OF JAMES LEUFESTEY AND Harvey N. Hill, partners, doing business under the firm-name of Leufesty and Hill, against whom a petition for adjudication of bankruptcy was filed on the day of March, A. D. 1874.	At Detroit, in said district, on the day of March, A. D. 1874, before me.

EASTERN DISTRICT OF MICHIGAN, *ss:*

Charles E. Letts, being duly sworn, says that he is a member of the firm of C. E. Letts & Co., that said firm are engaged in the business of selling coal; that they sold the firm of Leufesty & Hill, consisting of James Leufestey and Harvey N. Hill, coal during this last fall and winter, to be used in their manufacturing business, and received for this coal two notes, of which the following are copies:

$175.92.] DETROIT, MICH., *Dec.* 11*th*, 1873.

Two months after date, we promise to pay to the order of C. E. Letts & Co., one hundred seventy-five $\frac{92}{100}$ dollars at Merchants and Mfts.' Bank, value received.

LEUFESTEY & HILL.

16 DETROIT, *Jan'y 14th*, 1874.

Twenty days after date, we promise to pay to Mess. C. E. Letts & Co., or order, one hundred fifty-one and $\frac{50}{100}$ dollars at Merchants & Mfts. Bank, value received.

$151.50. LUFESTEY & HILL.

Payment of said notes, and each of them, has been demanded of said firm of Leufestey & Hill since said notes became due, but it has been refused, and said notes are unpaid. Said notes were held by the firm of C. E. Letts & Co. until March 21st, 1874, when they were endorsed and sold to William F. Thompson.

(Signed) C. E. LETTS.

On this 24th day of March, A. D. 1874, personally appeared before me C. E. Letts, above named, and was duly sworn to the truth of the foregoing deposition by him subscribed.

(Signed) JOHN GRAVES,
U. S. Commr. East. Dist. Mich

(Endorsed:) Filed March 24th, 1874, at 3 p. m.
(Signed) JNO. GRAVES,
Deputy Clerk.

17 *Order to show cause.*

In the district court of the United States for the eastern district of Michigan.

IN THE MATTER OF JAMES LEUFESTEY & HARVEY N. HILL, against whom a petition for adjudication of bankruptcy was filed on the 24th day of March, A. D. 1874. } In bankruptcy.

EASTERN DISTRICT OF MICHIGAN, *ss.*

Upon reading and filing proofs sustaining the allegations in the said petition, it is ordered that the said James Leufestey and Harvey N. Hill do appear at this court, as a court of bankruptcy, to be holden at Detroit, in the county of Wayne, in said district, on the 6th day of April, A. D. 1874, at 9 o'clock a. m., and show cause, if any there be, why the prayer of said petition should not be granted.

And it is further ordered that a copy of said petition, together with a copy of this order, be served on said James Leufestey and Harvey N. Hill, by delivering the same to each of them personally, or by leaving the same at his last usual place of abode in said district at least five days previous to the day herein required for their appearance.

18 Witness the honorable Jno. W. Longyear, judge of said court, and the seal thereof, at Detroit, in said district, on the 24th day of March, A. D. 1874.

[SEAL.] (Signed) D. J. DAVISON,
Clerk of said Court,
By JOHN GRAVES,
Dep'y Clerk.

UNITED STATES OF AMERICA,
Eastern District of Michigan, ss:

I, D. D. Marshall, hereby make oath that I have served a copy of the petition mentioned in the foregoing order, together with a copy of said

order, on James Leufestey and Harvey N. Hill, the debtors named therein, each, by delivering the same to said Hill personally at Pontiac, in said district, on the 27th day of March, A. D. 1874, and on James Leufestey, by leaving the same at his last usual place of abode, at Detroit, in said district, on the 26th day of March, A. D. 1874.

(Signed) D. D. MARSHALL,
Dep'ty U. S. Marshal for said district.

Subscribed & sworn to before me this 27th day of March, A. D. 1874.

(Signed) JNO. GRAVES,
U. S. Commr. East. Dist. Mich.

(Endorsed:) Filed April 6th, 1874, at 5 p. m. (Signed) Jno. Graves, deputy clerk.

19 *Order allowing further time to answer.*

In the district court of the United States for the eastern district of Michigan.

IN THE MATTER OF JAMES LEUFESTEY AND Harvey W. Hill, alleged bankrupts. } In bankruptcy.

At Detroit, in said district, on the 6th day of April, A. D. 1874.

This matter came on for hearing on the petition of W. F. Thompson for an adjudication of bankruptcy, and on the application of said alleged bankrupts for further time to answer; and after hearing Messrs. Jackson & Wisner, on behalf of said alleged bankrupts, and Mr. Walker, on behalf of the petitioner, and upon due consideration, it is ordered that said hearing be, and the same is hereby, adjourned to Thursday next, at 9 o'clock a. m.; and leave is hereby granted to said alleged bankrupts to answer said petition in the mean time.

Witness the honorable Jno. W. Longyear, judge of said court,
20 and the seal thereof, at Detroit, in said district, on the 6th day of April, A. D. 1874.

[SEAL.] (Signed) D. J. DAVISON,
Clerk of said Court,
By JNO. GRAVES,
Dep'y Clerk.

(Endorsed:) Filed April 6th, 1874, at 5 p. m. (Signed) Jno. Graves, dep'y clerk.

21 *Answer of Hill.*

The district court of the United States for the eastern district of Michigan.

IN THE MATTER OF THE PETITION OF WILLIAM F. Thompson, creditor,
vs.
JAMES LEUFESTEY AND HARVEY N. HILL, debtors. } In bankruptcy.

The separate answer of the said Harvey N. Hill to said petition.

And now on this adjourned return-day for the hearing of said petition

the said Havey N. Hill appears and denies that said firm, as mentioned in said petition, has committed the acts of bankruptcy set forth therein, and avers that the said firm should not be declared bankrupt for any cause in said petition alleged, and he demands that the same may be inquired of by a jury.

And for further and special answer to said petition, this respondent says that on the 5th day of March last he filed his bill of complaint in the superior court of Detroit, in chancery, to dissolve the
22 copartnership then existing between him and the said James Leufestey, setting forth, among other things, that said firm was indebted in a large amount of money, to wit, the sum of four thousand one hundred and twenty-four dollars, and that said firm was possessed of a large amount of assets, to wit, the sum of sixteen thousand four hundred and five dollars, and that the said Leufestey was insolvent, and praying for the appointment of a receiver, and that the said assets might be sold and converted into money, and the debts of said firm paid and discharged, according to the rights of all concerned, and also praying for an injunction, &c.

That on said 5th day of March an injunction was issued by said superior court of Detroit, in chancery, under the seal of said court, a copy of which injunction is hereto annexed, and marked "Exhibit A," and that said injunction was duly served upon said Leufestey, on the 7th day of March, 1874.

And this respondent further avers that on the 13th day of March, 1874, the said Leufestey duly appeared in said chancery cause by
23 his solicitors, Walker & Kent, and that since said appearance of said Leufestey in said cause, the petitioner in this case, who is the father-in-law of said Leufestey, and said Leufestey, have called upon the creditors of said firm, and without the knowledge or consent of this respondent, have represented to said creditors that the debts of said firm exceeded the assets of said firm, and that said firm would be thrown into bankruptcy and would not pay more than 25 per centum of its liabilities, and that this respondent was insolvent and could not pay his own individual debts; that by means of said representations, which this respondent says are false and untrue, the said petitioner and Leufestey induced nearly all the creditors of said firm to assign to said petitioner their claims against said firm for 25 per centum of the par value or face of said claims.

That among the claims so obtained by said petitioner and said Leufestey were the two notes referred to in said petition; that said notes were originally given by said Leufestey without the knowledge of
24 this respondent, nor do said notes appear upon the books of said firm as kept by said Leufestey, nor did this respondent know that such notes were in existence until the order to show cause issued in this case and the copy of said petition were served upon him.

And this respondent further avers that said petitioner and said Leufestey procured said claims, including said notes, for the purpose of influencing and commencing these proceedings in bankruptcy, and for the further purpose of hindering and delaying the proceedings in said chancery suit, and for the purpose of avoiding the injunction aforesaid and ousting said superior court of the jurisdiction of said assets; that said petitioner has on several occasions declared that such was his purpose.

And this respondent further says that just prior to said 5th day of March, he demanded of said Leufestey a correct statement of the liabilities of said firm; that said statement was given him by said Leufestey, and was by him, said Leufestey, declared to be correct; that by said

statement said firm was indebted to said petitioner in the sum of
25 thirteen dollars and eleven cents; that subsequently this respondent examined the records in the office of the clerk of the city of Detroit, and there found on record a chattel mortgage, executed by said firm to said petitioner, on the 9th day of Feb., 1874, a copy of which mortgage is hereto annexed, and marked "Exhibit B;" that said mortgage was executed by said Leufestey without the knowledge or consent of this respondent, and that the same is not referred to by the books of said firm as kept by said Leufestey; that this respondent knew nothing of the existence of said mortgage until he examined the records as aforesaid.

And this respondent further says that the notes mentioned in said petition are not the only claims held by said Thompson against said firm, but that he is also the holder of a certain other note for four hundred and ten dollars, said note being secured by said chattel-mortgage as aforesaid, and having been made by said Leufestey, without the knowledge or consent of this respondent, in the firm-name, to said Thompson, the petitioner, and that the said Thompson then and there well knew that the said Leufestey was insolvent and bankrupt,
26 and that said chattel-mortgage was made by the said Leufestey, and taken by the said Thompson, for the purpose of evading the provisions of the bankrupt act.

And this respondent further says that the actings and doings of the said petitioner in the premises were a fraud upon the rights of this respondent, and he charges the fact to be true, that the said petitioner has instituted these proceedings in collusion with the said Leufestey, and for the purpose of defrauding this respondent, and he submits that said petitioner is not entitled to any relief in the premises.

(Signed) HARVEY N. HILL.

Dated April 8th, 1874.

JACKSON & WISNER,
Respondent Hill's Attorneys.

(Endorsed) Filed April 9th, 1874. (Signed) D. I. Davison, clerk.

27 EXHIBIT A.

State of Michigan, in the superior court of Detroit, in chancery.

In the name of the people of the State of Michigan, to James Leufestey, and to his counsellors, attorneys, solicitors, & agents, and each and every of them, greeting:

Whereas it has been represented to us, in the superior court of Detroit in chancery, on the part of Harvey N. Hill, complainant, that he has lately exhibited his bill of complaint against you, the said James Leufesty, defendant, to be relieved touching the matter therein complained of, in which bill it is stated, amongst other things, that you are combining and confederating with others to injure the said complainant touching the matters set forth in the said bill, and that your actings and doings in the premises are contrary to equity and good conscience: We, therefore, in consideration thereof, and of the particular matters in the said bill set forth, do strictly command you, the said James Leufestey, and the persons before mentioned, and each and every of you, under the penalty of ten thousand dollars, to be levied on your lands, goods, and
28 chattels, to our use, that you do absolutely desist and refrain

from demanding, receiving, or obtaining possession of any debts due or to become due or belonging to the Leufesty & Hill Manufacturing Company, that being the name of the partnership existing between you and said complainant, & also from in any manner intermeddling with the books, papers, bills, or accounts of the said partnership, and from in any manner assigning or disposing of said partnership property, or in any manner intermeddling therewith, until the further order of this court.

Witness the honorable Lyman Cochrane, judge of the superior court of Detroit, at the court-rooms of said court, in the city of Detroit, Michigan, and the seal of said court, this 5th day of March, in the year one thousand eight hundred and seventy-four.

[SEAL.] (Signed) RAY HADDOCK,
Register,
By W. S. HARSHA,
Dep. Register.

JACKSON & WISNER,
Solicitor' for Compl't.

(Endorsed:) Injunction.

29 EXHIBIT B.

Chattel-mortgage.

[Revenue stamp.]

This indenture, made the 9th day of Feb., in the year of our Lord one thousand eight hundred and seventy four, between Leufestey and Hill, of Detroit, Mich., of the one part, & William F. Thompson, of the other part, witnesseth, that the said parties of the first part, for and in consideration of the sum of four hundred & ten dollars to them in hand paid by the said party of the second part, at or before the sealing and delivering of these presents, the receipt whereof is hereby acknowledged, do grant, bargain, and sell unto the said party of the second part, all and singular the goods and chattels hereinafter mentioned, that is to say:

All the personal property of every kind belonging to the parties of the first part and now situate and being on the premises occupied by them in the Sixth ward, so called, and near Twenty-fourth street, in the city of Detroit, Wayne County, Michigan, and consisting mainly of logs, heading, fence-pickets, and unfinished measures.

To have and to hold, all and singular, the goods and chattels herein-
before granted, bargained, and sold, or mentioned, or intended so
30 to be, unto the said party of the second part forever. Said goods and chattels now remaining and continuing in the possession of the said parties of the first part in said place.

Provided always, and these presents are upon the express condition, that if the said parties of the first part shall and do, well and truly, pay, or cause to be paid to the said party of the second part, the sum of four hundred and ten dollars, with interest at ten per cent. per annum, on the first day of June, 1874, according to a certain promissory note of even date herewith, executed by the said parties of the first part to the said party of the second part, then these presents, and every matter herein contained, shall cease and be null and void.

But in case default shall be made in payment of the said sum of money above mentioned, or the interest thereon, or any part thereof, at

the time above limited for the payment of the same, or if the said parties of the first part shall sell, assign, or dispose of, or attempt to sell, assign, or dispose of the whole or any part of the said goods and chattels, or remove or attempt to remove the whole or any part thereof, from the said place without the written assent of the party of the second part, then and from henceforth it shall and may be lawful for the said party of the second party, his executors, administrators, or
31 assigns, or his, her, or their authorized agent, to enter upon the premises of the said parties of the first part, or any place or places where the said goods and chattels, or any part thereof, may be, and take possession thereof, and to sell and dispose of the same for the best price or prices that can be obtained therefor at public vendue, giving six days' notice of such sale by a written or printed notice to be posted at one or more public place or places in the said town, and out of the money to arise by such sale thereof to pay and retain the said sum of money above mentioned, and the interest thereon, and all charges of such sale, (if so much there shall be,) rendering the surplus moneys (if any there shall be) to the said parties of the first part.

In witness whereof the parties of the first part have hereunto set their hands the day and year first above written.

(Signed) LEUFESTEY AND HILL.

32 (Indorsed:) Chattel-mortgage. Leufestey & Hill to William Thompson. Filed Feb. 9th, 1874, 4.10 o'clock p. m. (Signed) Chas. H. Borgman, city clerk.

33 *Subpœna.*

[SEAL.] The President of the United States to C. E. Letts, Edward Stauge, M. A. Hamilton, Geo. C. Westenbu, Leroy I. Heath:

You are hereby commanded that, laying aside all and singular your business and excuses, you be and appear in the district court of the United States for the eastern district of Michigan, in bankruptcy, at the court-house, in the city of Detroit, in said district, on Tuesday, the 28th day of April, A. D. 1874, at 9 o'clock a. m., of said day, then and there to testify and give evidence on behalf of one of the respondents, Harvey N. Hill, and not to depart said court without leave thereof.

Hereof fail not, under the penalty of what may befall you thereon.

Witness the Hon. John W. Longyear, judge of said court, at Detroit, this 23d day of April, in the year of our Lord one thousand eight hundred and seventy.

(Signed) D. J. DAVISON, *Clerk*,
By JNO. GRAVES,
Deputy Clerk.

EASTERN DISTRICT OF MICHIGAN, *ss:*

I hereby certify and return that upon the 24th day of April, A
34 D. 1874, I served the within writ upon the within-named C. E Letts, Edward Stauge, M. A. Hamilton, George C. Wettenbee, by delivering each a copy to each of them said writ, and by showing the seal of the court impressed thereon.

(Signed) JOSEPH R. BENNETT, *Marshal*,
By GEORGE DAVIE, *Deputy.*

Travel, 5 miles, 6, 30; service paid each, $1.50, 6.00; fees, 2.00—$8.30.

(Endorsed:) Received payment.
(S'g'd) GEO. DAVIE.

(Indorsed:) District court of the United States for the eastern district of Michigan. In bankruptcy. William F. Thompson, pet. creditor, vs. James Leufestey & Harvey N. Hill, debtors. United States subpœna. Returned & filed the 28th day of April, A. D. 1874. (Signed) D. I. Davison, clerk. Accepted. (S'g'd) C. E. Letts.

35 *Trial by jury.*

At a session of the district court of the United States for the eastern district of Michigan, *of Michigan*, continued and held pursuant to adjournment, at the district court-room in Detroit, on Friday, the first day of May, in the year of our Lord one thousand eight hundred and seventy-four.

Present, the Hon. John W. Longyear, district judge.

IN THE MATTER OF JAMES LEUFESTEY AND Harvey N. Hill, against whom a petition for adjudication of bankruptcy is filed. } Jury trial.

This cause now coming on for trial by jury, and the parties thereto by their attorneys being now present in court, and ready to proceed with the trial, thereupon came a jury, to wit, Daniel Anderson, Joseph Ferguson, Alex. Kittle, Bray McClure, John R. Martin, Horatio M. Stone, James Lowe, John S. McDowell, Sylvester G. Noble, Edward S. Hunt, Lewis Michaels, and Michael J. Vreeland, who, being duly elected, tried, and sworn well and truly to try the issue of bankruptcy herein
36 joined, thereupon hear the evidence adduced in the cause, and the arguments of counsel, and said jurors, having received the charge of the court, thereupon retire to consult of their verdict, in charge of an officer duly sworn to attend upon them; and after a short absence, said jurors return into court, and say they find that said respondent did commit the act of bankruptcy as charged in the petition filed in this cause.

37 In the district court of the United States for the eastern district of Michigan.

IN THE MATTER OF JAMES LEUFESTEY & HARVEY N. HILL, bankrupts. } In bankruptcy, at Detroit, in said district 8th day of May, A. D. 1874.

EASTERN DISTRICT OF MICHIGAN, *ss:*

On the 1st day of May, A. D. 1874, this cause came on to be heard, at Detroit, in said court, and the parties being present in court by their respective attorneys, a jury was called and sworn to try the issue joined; and, having heard the pleadings and proofs and arguments of counsel, and after receiving the charge of the court, they render their verdict, upon due deliberation, in favor of the petitioners.

And thereupon, and upon consideration of the proofs in said cause, it was found that the facts set forth in said petition were true, and it is therefore adjudged that James Leufestey & Harvey N. Hill became bankrupt within the true intent and meaning of the act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2d, 1867, before the filing of said petition, and they are therefore declared and adjudged bankrupt accordingly.

38 And it is further ordered that the said bankrupt shall, within five days after notice of this order, make and deliver, or transmit

by mail, post-paid, to the marshal as messenger, a schedule of their creditors and inventory of their estate, in the form and verified in the manner required of the petitioning debtor by the said act.

Witness the honorable Jno. W. Longyear, judge of the said court, and the seal thereof, at Detroit, in said district, on the eighth day of May, A. D. 1874.

[SEAL.] (Signed) D. J. DAVISON,
Clerk of the District Court for said District,
By JNO. GRAVES,
Deputy Clerk.

(Indorsed:) District court of the United States for the eastern district of Michigan. In bankruptcy. In the matter of James Leufestey, & Harvey N. Hill, bankrupts. Adjudication of bankruptcy.

(Endorsed:) Filed May 8th, 1874, 10 a. m. (Signed) Jno. Graves, dep'y clerk.

39 *Order allowing time to settle exceptions.*

In the district court of the United States for the eastern district of Michigan. In bankruptcy.

IN THE MATTER OF JAMES LEUFESTEY & HARVEY N. HILL, bankrupts. } At Detroit, in said district, on the 8th day of May, A. D. 1874.

On motion of Jackson and Wisner, solicitors for said Hill, one of said bankrupts, and good cause being shown therefor, ordered, that there be, and is hereby, allowed to said Hill ten days from this date in which to settle a bill of exceptions to the judgment of said court in this matter.

Witness the honorable Jno. W. Longyear, judge of said court, and the seal thereof, at Detroit, in said district, on the 8th day of May, A. D. 1874.

[SEAL.] (Signed) D. J. DAVISON,
Clerk of said Court,
By JNO. GRAVES,
Depy. Clerk.

(Endorsed:) Filed May 8th, 1874, at 4 p. m. (Signed) Jno. Graves, deputy clerk.

40 *Bill of exceptions.*

United States district court for the eastern district of Michigan. In bankruptcy.

IN THE MATTER OF THE PETITION OF WILLIAM F. Thompson
vs.
JAMES LEUFESTEY & HARVEY N. HILL, alleged bankrupts.

At a session of said court, held at the court-room of said court, in the city of Detroit, in said district, on the 1st day of May, 1874, before the honorable John W. Longyear, judge of said district court, the issue

joined between the parties in this cause came on to be tried by a jury of said district for that purpose duly empannelled, good and lawful men of said district, at which day came there as well said petitioner as said respondent Hill, by their respective attorneys, and the jurors of the jury aforesaid empannelled to try the said issue also came, and were then and there duly chosen and sworn to try the issue aforesaid between the parties aforesaid.

And upon the trial of the issue aforesaid, counsel for said petitioner, to maintain and prove said issue on his part, read in evidence the petition filed in this cause, and thereupon said petitioner rested his
41 case.

And thereupon counsel for said respondent Hill, to maintain and prove said issue on his part, stated to said district judge that they desired said petitioner might be called & sworn for the purpose of cross-examining him upon the material facts set forth in the petition in this case.

And thereupon said district judge did declare and deliver his opinion that if counsel for said respondent Hill calls the petitioner, he calls him as his witness, which he has the right to do.

And thereupon counsel for said respondent Hill declined to do so, and did then and there except to the decision of said district judge so given and made as aforesaid.

And thereupon counsel for said respondent Hill, to further maintain and prove said issue on his part, called one Charles E. Letts, who, being duly sworn, testified as follows, to wit, that he was a member of the firm of Letts & Co., of this city, and that said firm were dealers in coal.

And thereupon counsel for said petitioner stated to said court, in the presence and hearing of said jury, that they admitted that the
42 notes referred to in the petition in this case were purchased by the petitioner for the purpose of filing a petition for an adjudication in bankruptcy.

And thereupon said witness further testifies that said firm sold said notes to Mr. Thompson about the middle of March last, and after the same matured, but he could not give the exact date.

And thereupon the following questions were put to said witness by counsel for said respondent Hill, and the following answers were given to the same by him, to wit:

Q. Did Mr. Thompson make any statements to you in reference to the purpose for which he bought the notes?

A. I do not think he did; no, sir, he did not.

Q. Did he, at the time of the purchase, make any such statements to you?

A. No, I think he did not.

Q. Did he prior to it?

A. No, I do not think he did, although I inferred the purpose for which he bought them. He did not say what purpose he wanted them for directly.

Q Did he say anything to you with reference to the injunction that was then pending in the superior court of Detroit, in chancery?

By the COURT. Answer that yes or no. Do not tell what he said.

A. Yes, sir.

43 Q. State whether said (if anything) about the purchase of those notes for the purpose of enabling Leufestey to avoid the effect of that injunction in the superior court of Detroit, in chancery?

To which question so put to said witness for said respondent Hill counsel for said petitioner did then and there object, for the reasons that the same was irrelevant.

And thereupon said district judge did declare and deliver his opinion to the jury aforesaid, that said question was incompetent, and refused to allow the same to be answered; to which opinion and decision of said district judge counsel for said respondent Hill did then & there except.

Q. State whether Leufestey came down and had conversation with you, and then Thompson and Leufestey came together to see you about the same matter, and talked about what had previously been the conversation between you and Leufesty.

A. Yes, sir.

Q. What was said at either of these occasions by Leufestey with reference to obtaining this paper for the purpose of avoiding the effect of that injunction in the superior court of Detroit, in chancery?

To which question so put to said witness as aforesaid by coun-
44 sel for said respondent Hill counsel for said petitioner did then and there object, for the reason that the same was irrelevant and incompetent.

And thereupon said district judge did then and there declare and deliver his opinion that said question was irrelevant and incompetent, and did then and there refuse to allow the same to be answered; to which said ruling and decision of said district judge counsel for said respondent Hill did then and there except.

That at the time the last two questions were put to said witness, counsel for said respondent Hill stated to said district judge that they proposed to show in connection with said questions that at the time of the purchase of said notes by said petitioner said Hill had filed his bill in the superior court of Detroit, in chancery, for the purpose of dissolving the copartnership existing between him and said Leufestey, and praying for an injunction, &c., and that an injunction was issued therein, and duly served on said Leufestey, and that he had duly appeared in said cause, and that the proceedings in this cause were instituted by said Thompson and said notes obtained by him for the pur-
pose of making his son-in law, said Leufestey, to avoid the effect
45 of said proceedings in said superior court of Detroit, in chancery, and of influencing the proceedings under the bankrupt act.

Q. To whom did you deliver these notes?

A. Mr. Thompson.

Q. Personally?

A. Yes, sir.

Q. Reflect a moment, did not Leufesty have them first, and then hand them to Thompson?

A. No, sir; I delivered them directly to Thompson, at Walker's office.

Q. At the time Leufestey & Thompson were present, were there any statements made by them to you to induce you to transfer this paper to Thompson; in reference to the responsibility of Mr. Hill?

To which question so put to said witness as aforesaid counsel for said petitioner did then and there object, for the reason that the same was irrelevant and incompetent.

And thereupon said district judge did then and there declare and deliver his opinion, that said question was irrelevant & incompetent, and then and there refused to allow the same to be answered; to which ruling & decision of said district judge counsel for respondent Hill did then and there except.

Q. Did he not state on that occasion that Mr. Hill was entirely
46 irresponsible; that he was wholly worthless; not worth more than $1,000 *dollars*, & that was in a house & lot in Pontiac, which was exempt.

To which question counsel for petitioner did then and there object because the same was irrelevant.

And thereupon said district judge decideds that the same was incompetent, and refused to allow said question to be answered; to which ruling and decision of said district judge counsel for said respondent Hill did then & there except.

This witness further stated that the consideration of these notes was coal sold and delivered to Leufesty & Hill by Letts & Co., and that prior to the delivery of these notes the coal so sold as aforesaid had been standing in account on their books, and that the account was put into two notes instead of one because Mr. Leufestey said he could not pay it all at one time, and that the last note was a renewal note, and Mr. Thompson paid the 25 per cent. for these notes.

And thereupon counsel for respondent Hill proposed to show by him that at the maturity of these notes, and ever since, he had been entirely solvent, and owned in his own right, and exempt from execution, at least
10,000 dollars' worth of property in this judicial district; that
47 the firm were possessed of a large amount of assetts, some 10,000 dollars at least, here in Detroit, and that the petitioner after he obtained these notes made no call upon Mr. Hill for payment; that he, petitioner, knew his (Hill's) circumstances, and that Mr. Hill had no knowledge of the existence of these notes until these proceedings were begun. To which testimony so offered by counsel for said respondent Hill counsel for said petitioner did then and there object for the reason that the same was irrelevant and incompetent.

And thereupon said district judge declared and delivered his opinion that said testimony was irrelevant and incompetent, and refused to allow the same to be given to said jury. To which ruling and decision of said district judge counsel for said respondent did then and there except. That the foregoing is substantially all the evidence given, or offered to be given, by the respective parties on the trial of this cause, and that the same was submitted to said jury under the charge of the court, without argument.

That said district judge charged the jury, among other things,
48 that the validity of these notes is not questioned, nor that they were debts against the concern, and when that is admitted the whole cause is admitted. Because, if they were debts against the concern, they ought to have been paid at maturity, and they were not paid, because the suspension having continued 14 days.

That is all there is of it. The law makes the non-payment an act of bankruptcy.

And thereupon said jury, by the direction of said district judge, gave their verdict, that they found the respondents guilty of the several acts of bankruptcy set forth in the petition in this case.

And inasmuch as none of the exceptions so offered and made as aforesaid to the rulings, opinions, and decisions, of said district judge do appear upon the record of said trial, therefore, on the prayer of said respondent Hill, the said district judge has signed this bill of exceptions, according to the statute in such cases made and provided, this 18th day of May, 1874.

(Signed) JNO. W. LONGYEAR,
District Judge.

(Endorsed:) Filed May 18th, 1874, at 9 a. m. (Signed) Jno. Graves, dep'y clerk.

49 *Notice and proof of service, &c.*

STATE OF MICHIGAN,
Eastern District of Michigan:

In the district court of the United States for the eastern district of Michigan. In bankruptcy.

IN THE MATTER OF THE PETITION OF WILLIAM F. Thompson, creditor,
vs.
JAMES LEUFESTEY & HARVEY N. HILL, alleged bankrupts.

GENTLEMEN: Take notice that respondent Hill, in the above-entitled cause, conceiving himself aggrieved by the errors in the rulings and charges of the court in the trial of said cause in the said district court, has determined to take the said cause to the circuit court of the United States for said district of Michigan, by writ of error, and that for that purpose a bill of exceptions in said cause will be settled by the Hon. John W. Longyear, the judge of said district court, who tried said cause, on Monday, the 18th day of May, 1874, at the opening of said court, on
50 that day, at the court-room of said court, in the city of Detroit.
That you are herewith served with a copy of said bill of exceptions, to which you are at liberty to propose amendments in writing.
Yours, &c.,

JACKSON & WISNER,
Attys. for Respondent Harvey N. Hill.

To Messrs. WALKER & KENT,
Attys. for Petitioner.

Dated May 16th, 1874.

STATE OF MICHIGAN,
Eastern District of Michigan, County of Wayne, ss:

In the district court of the United States for the eastern district of Michigan. In bankruptcy.

IN THE MATTER OF THE PETITION OF WILLIAM F. Thompson
vs.
JAMES LEUFESTEY & HARVEY N. HILL, alleged bankrupts.

H. C. Wisner, being sworn, says that on the 16th day of May, 1874, he served a notice, of which the annexed is a true copy, upon Edward C. Walker, esqr., one of the attorneys for said petitioner, by handing the same to him personally, together with the copy of the bill of exceptions referred to in said notice, at the city of Detroit.

(Signed) H. C. WISNER.

Subscribed & sworn to before me this 16th day of May, 1874.

(Signed) PHILIP J. D. VANDYKE,
Notary Public, Wayne Co., Mich.

(Endorsed:) Filed May 18th, 1874, at 9 a. m. (S'g'd) Jno. Graves, dep'y clerk.

51 *Bond on writ of error.*

District court of the United States for the eastern district of Michigan.
In bankruptcy.

IN THE MATTER OF THE PETITION OF WILLIAM F. THOMPSON
vs.
JAMES LEUFESTEY AND HARVEY N. HILL, alleged bankrupts.

Know all men by these presents that Mr. Harvey N. Hill and Abram Parker, both of said district, are held and firmly bound unto Willam F. Thompson in the sum of five hundred dollars, to be paid to the said William F. Thompson, his executors and administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and one and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seal and dated this 18th day of May, A. D. 1874.

Whereas the above-bounden Harvey N. Hill hath prosecuted a writ of error to the circuit court of the United States for the eastern
52 district of Michigan to review the judgment rendered in the above-entitled suit by the district court of the United States for the eastern district of Michigan, in bankruptcy:

Now, therefore, the condition of this obligation is such that if the above-named Harvey N. Hill shall prosecute his said writ of error to effect and answer all costs if he shall fail to make good his plea, then this *objection* shall be void; otherwise the same shall be and remain in full force and virtue.

(Signed) HARVEY N. HILL. [SEAL.]
(") ABIRAM PARKER. [SEAL.]

Sealed and delivered in the presence of—
(Signed) H. C. WISNER.

Approved: (Signed) JNO. W. LONGYEAR,
District Judge.

(Endorsed:) Filed May 18th, 1874, at 4 p.m. (Signed) D. J. Davison, clerk.

53 *Writ of error re.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judge of the district court of the United States for the eastern district of Michigan, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in said court before you, between William F. Thompson and James Leufestey and Harvey N. Hill a manifest error hath happened, to the great damage of the said Hill, as by his complaint appears: We, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same,

to the circuit court of the United States for the eastern district of Michigan, together with this writ, so that you may have the same at the city of Detroit, in said district, on the first Tuesday of June next ensuing, in the said circuit court to be then and there held, that the record
54 and proceedings aforesaid being inspected, the said circuit court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, the 18th day of May, in the year of our Lord one thousand eight hundred and seventy-four.

[SEAL.] (Signed) ADDISON MANDELL, *Clerk.*

(Endorsed:) Filed May 18th, 1874, at 4 p. m. (Signed) D. J. Davison, clerk.

55 *Citation.*

STATE OF MICHIGAN,
Eastern District of Michigan, ss:

To WILLIAM F. THOMPSON, Esq're, greeting:

You are hereby cited and admonished to be and appear at a circuit court of the United States for the eastern district of Michigan, to be holden at the court-room of said court in the city of Detroit, in said district, on the first Tuesday of June next ensuing, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the eastern district of Michigan, in bankruptcy, wherein Harvey N. Hill is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable M rrison R. Waite, Chief-Justice of the Supreme Court of the United , the 18th day of May, A. D. 1874.

(Signed) JNO. W. LONGYEAR,
District Judge.

56 The circuit court of the U. S. for the eastern dist. of Michigan.

STATE OF MICHIGAN,
Eastern District of Michigan:

HARVEY N. HILL, PLFF*s.* ERROR,
vs.
WILLIAM F. THOMPSON, DEFT*s.* ERROR.

H. C. Wisner, being sworn, deposes and says that on the 18th day of May, 1874, he served a copy of the within citation upon William F. Thompson, by handing the same personally to Edward C. Walker, one of the firm of Walker and Kent, the attorneys of said Thompson, at the city of Detroit, in said district.

(Signed) H. C. WISNER.

Subscribed & sworn to before me this 18th day of May, 1874.

(Signed) D. J. DAVISON,
U. S. Commr. East. Dist. Mich.

(Endorsed:) Filed May 18th, 1874, at 5 p. m. (Signed) D. J. Davison, clerk.

57 *Assignment of error.*

Circuit court of the United States for the eastern district of Michigan.

HARVEY N. HILL, IMPLEADED WITH JAMES Leufestey, plffs. error, *vs.* WILLIAM F. THOMPSON, DEFT. IN ERROR.	In error. Of the June term, A. D. 1874.

Afterwards, to wit, on the first Tuesday in June, in this same term, before the justice of said circuit court, at the city of Detroit, in said circuit, comes the said Harvey N. Hill, by Jackson & Wisner, his attorneys, and says that in the record and proceedings aforesaid there is manifest error in this, to wit, that the district judge, before whom this cause was tried in the court below, erred in this, to wit:

First. That said district judge erred in not permitting the petitioner, Wm. F. Thompson, to be cross-examined as to the material facts set forth in the petition in this case, as appears by the bill of exception settled and filed therein.

Second. That said district judge erred in not permitting the
58 witness Letts to answer the following questions.

Q. "State what he said (if anything) about the purchase of these notes, for the purpose of enabling Leufestey to avoid the effect of that injunction in the superior court of Detroit, in chancery."

Third. That said district judge erred in not permitting said witness Letts to answer the following questions, to wit:

Q. "What was said at either of these occasions by Leufestey with reference to obtaining this paper for the purpose of avoiding the effect of that injunction in the superior court of Detroit, in chancery?"

Fourth. That said district judge erred in not permitting said witness Letts to answer the following questions, to wit:

Q. "At the time Leufestey & Thompson was present, were there any statements made by them to you to induce you to transfer this paper to Thompson, in reference to the responsibility of Mr. Hill?"

Fifth. That said district judge erred in not permitting said witness Letts to answer the following questions, to wit:

Q. "Did he not state on that occasion that Mr. Hill was en-
59 tirely irresponsible; that he was wholly worthless, not worth more than one thousand dollars, and that was in a house and lot in Pontiac which was exempt?"

Sixth. That said district judge erred in not receiving the evidence proposed to be given by the witness Hill, to wit:

"That at the maturity of these notes, and ever since, he had been entirely solvent and owned in his own right, & exempt from execution, at least ten thousand dollars' worth of property in this judicial district; that the firm were possessed of a large amount of assets, some ten thousand dollars at least, here in Detroit; and that the petitioner, after he obtained these notes, made no call upon Mr. Hill for payment; that he (petitioner) knew Mr. Hill's circumstances, and that Mr. Hill had no knowledge of the existence of these notes until these proceedings were begun."

All of which appears by said bill of exceptions.

Finally. That by the record aforesaid it appears that the judgment aforesaid given was given for the said William F. Thompson, and
60 against the said Harvey N. Hill and the said James Leufestey,

whereas, by the law of the land the said judgment ought to have been given for the said Harvey N. Hill and James Leufestey and against the said William F. Thompson; and the said Harvey N. Hill prays that the judgment aforesaid may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he hath lost by reason of said judgment, &c.

(Signed) JACKSON & WISNER,
Attys. for Plaintiff in Error.

(Endorsed:) Filed May 29th, 1874, at 5 p. m. (Signed) Jno. Graves, dep'y clerk.

61 UNITED STATES OF AMERICA.

District court of the United States for the eastern district of Michigan, ss.

IN THE MATTER OF THE PETITION OF WILLIAM F. Thompson, creditor,
vs.
JAMES LEUFESTEY AND HARVEY N. HILL, debtors. } In bankruptcy.

I, D. J. Davison, clerk of said court, do hereby certify the above & foregoing to be a true copy of the original record of proceedings in the above-entitled cause, the same having been carefully compared by me with such original, is a correct transcript therefrom & of the whole of such original record.

In testimony whereof I have hereunto subscribed my name & affixed the seal of said court, at Detroit, this 1st day of June, in the year of our Lord one thousand eight hundred & seventy-four, & of our Independence the ninety-eighth.

[SEAL.] (Signed) D. J. DAVISON, *Clerk.*
By JNO. GRAVES,
Depy. Clerk.

DISTRICT OF MICHIGAN, *ss.*

I, Ross Wilkins, judge of said court, do hereby certify that John Winder is clerk.

62 (Indorsed:) No. 5337. U. S. circuit court east. dist. Mich., in bankruptcy. In re James Leufestey & Harvey N. Hill, bankrupts. Transcript of the records in the district court. Rec'd & filed in the clerk's office, June 1st, 1874. (Signed) A. Mandell, clerk, by Jno. Graves, depy.

63 STATE OF MICHIGAN,
Eastern District of Michigan, County of Wayne, ss:

The circuit court of the United States for the eastern district of Michigan.

HARVEY N. HILL, IMPLEADED WITH JAMES Leufestey, plaintiff in error,
vs.
WILLIAM F. THOMPSON, DEFENDANT IN error.

Harvey N. Hill, being duly sworn, says that he is the plaintiff in error

in the above-entitled cause, and the Hill of the firm of Leufestey & Hill mentioned in the proceedings therein.

And this deponent further says that the matter in dispute and the amount in controversy in this cause exceeds the sum and value of two thousand dollars, exclusive of costs.

And this deponent further says that said firm of Leufestey & Hill own and are in possession of a large amount of property, the assets of said firm, and that the same is of the value of at least ten thousand dollars; all of which is liable for the payment of the debts of said firm,
64 and that said firm of Leufestey and Hill are also indebted in the sum of at least four thousand dollars, to wit, four thousand one hundred and twenty-one dollars, and that said defendant in error, said William F. Thompson, is the assignee and holder and owner of at least two thousand five hundred dollars thereof.

And further this deponent says not.

HARVEY N. HILL.

Sworn & subscribed to before me this 29th day of May, 1874.

A. MANDELL,
U. S. Commr. Eastern Dist. of Mich.

(Endorsed:) Filed in clerk' office, June 2d, 1874. A. Mandell, clerk.

65 At a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment at the district court-room, in the city of Detroit, on Saturday the thirteenth day of June, in the year one thousand eight hundred and seventy-four.

Present, honorable Noah H. Swayne, associate justice of the Supreme Court. Present, honorable John W. Longyear, district judge.

IN RE JAMES LEUFESTEY & HARVEY N. Hill, alleged bankrupts, Harvey N. Hill, impleaded with James Leufestey, plaintiff in error,

vs.

WILLIAM F. THOMPSON, DEFENDANT IN error.

On writ of error to the district court of the United States for the eastern district of Michigan.

This cause now coming on to be heard on writ of error to the district court, and the same having been fully argued by counsel on either side and submitted to the court for decision, and the record of the court below having been seen and inspected by this court, and mature deliberation being thereupon had, it is now therefore considered by this court that the judgment and decree of the said district court between
66 the parties aforesaid be, and the same is, now by the court here affirmed, with costs.

(Judge Longyear did not participate in the above decision.)

66½ Supreme Court of the United States.

HARVEY N. HILL, IMPLEADED WITH JAMES Leufestey, *vs.* WILLIAM F. THOMPSON. } In error.

Of the October term in the year of our Lord one thousand eight hundred and seventy-four.

Afterwards, to wit, on the second Monday of October, in this same term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said Harvey N. Hill, by H. B. Brown, his attorney, and says that in the record and proceedings aforesaid there is manifest error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid was given for the said William F. Thompson against the said Harvey N. Hill, impleaded with James Leufestey, whereas, by the law of the land, the said judgment ought to have been given for the said Harvey N. Hill, impleaded with said James Leufestey, against the said William F. Thompson.

And the said Harvey N. Hill prays that the judgment aforesaid may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he has lost by occasion of the said judgment, &c., &c.

H. B. BROWN,
Atty. for Plaintiff in Error.

STATE OF MICHIGAN,
County of Wayne, ss:

W. B. JACKSON, being sworn, says that on the 14th day of Oct., 1874, he served a copy of the within assignment of error upon Messrs. Walker & Kent, the attys. for deft. in error.

W. B. JACKSON.

Subscribed & sworn to before me this 14th day of Oct., 1874.

JNO. GRAVES,
U. S. Commr., East. Dist. Mich.

(Indorsed:) The Supreme Court of the United States. Harvey N. Hill, impleaded with James Leufestey, vs. William F. Thompson. Assignment of error. Filed in clerk's office Oct. 14, 1874. A. Mandell, clk. H. B. Brown, attorney for plff. in error. District Mich.

67 Supreme Court of the United States.

HARVEY N. HILL, IMPLEADED WITH JAMES Leufestey, plff. in error, *vs.* WILLIAM F. THOMPSON, DEFT. IN ERROR.

Know all men by these presents that we, Harvey N. Hill & Abiram Parker, are held and firmly bound unto William F. Thompson in the sum of five hundred dollars, to be paid to the said William F. Thompson, his executors or administrators, to which payment, well & truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this 17th day of June, A. D. 1874.

Whereas the above-named Harvey N. Hill hath prosecuted a writ
68 of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the circuit court of the United States for the eastern district of Michigan:

Now, therefore, the condition of this obligation is such that if the above-named Harvey N. Hill shall prosecute his said writ of error to effect and answer all damages and costs if he fail to make good his plea, including just damages for delay, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

HARVEY N. HILL. [L. S.]
ABIRAM PARKER. [L. S.]

Sealed and delivered in presence of—
HENRY C. WISNER.

Approved:

JNO. W. LONGYEAR,
District Judge.

69, 70 (Indorsed:) No. 5337. U. S. Supreme Court. Harvey N. Hill, impleaded with, &c., plff. in error., vs. William F. Thompson, deft. in error. Copy of bond. Filed in clerk's office June 19, 1874. A. Mandell, clk.

71 EASTERN DISTRICT OF MICHIGAN, *ss:*

I, Addison Mandell, clerk of the circuit court of the United States for the eastern district of Michigan, do hereby certify the above and foregoing to be a true copy of the original record from the district court of the United States for the eastern district of Michigan; of the affidavit of the amount in controversy, and of the record of judgment and decree in said circuit court, in the case of Harvey N. Hill, impleaded with James Leufestey, plaintiff in error, against William F. Thompson, defendant in error, the same having been compared by me with such originals, and is a correct transcript therefrom and of the whole thereof, and also of the bond on writ of error filed in said cause.

In testimony whereof I have hereunto set my hand officially and affixed the seal of said court, at Detroit, this tenth day of October, in the year one thousand eight hundred and seventy-four.

[SEAL.] ADDISON MANDELL, *Clerk.*

Clerk's fees, $17.45. A. Mandell, clk.

(Indorsement on cover:) No. 195. Harvey N. Hill, impleaded with James Lenfestey, plaintiff in error, vs. William F. Thompson. E. Michigan C. C. U. S. Filed 19th October, 1874.

SUPREME COURT

OF THE

UNITED STATES.

No. 195

HARVEY N. HILL,
IMPLEADED, Etc.,
PLAINTIFF IN ERROR,

VS.

WILLIAM F. THOMPSON,
DEFENDANT IN ERROR.

BRIEF FOR PLAINTIFF IN ERROR.

H. B. BROWN, Attorney for Plaintiff in Error.

DETROIT:
DAILY POST BOOK AND JOB PRINTING ESTABLISHMENT.
1877.

SUPREME COURT

OF THE

UNITED STATES.

HARVEY N. HILL, IMPLEADED, ETC.,
Plaintiff in Error,

VS.

WILLIAM F. THOMPSON,
Defendant in Error.

BRIEF OF PLAINTIFF IN ERROR.

STATEMENT.

On the 24th March, 1874, defendant in error filed a petition in bankruptcy against the firm of Lenfestey & Hill, alleging the suspension of payment and non-resumption during fourteen days of two notes made by said firm.

Lenfestey made no opposition to said proceedings, but Hill defended, and in his separate answer he alleged, by way of special matter, that he had filed a Bill in Equity in the Superior Court of Detroit against Lenfestey for an injunction, receiver, and a decree dissolving the firm; that the firm was indebted in the sum of about $4,000, and was worth about $16,405; that Lenfestey was insolvent personally; that an injunction was issued and

served upon Lenfestey, restraining him from further interference with the firm property. That William F. Thompson was the father-in-law of Lenfestey, and that Thompson and Lenfestey had called upon the creditors of the firm, and by falsely representing that said firm was bankrupt, and could not pay more than 25 per cent. of its debts, they induced said creditors to assign to said Thompson their claims against said firm for 25 per cent. of their value. That the notes mentioned in the petition were so acquired by Thompson. That they were given by Lenfestey in the firm name; that the firm books do not show their existence, nor did Hill know of their existence until the proceedings in bankruptcy were commenced against him. That Thompson bought up these claims for the express purpose of influencing and commencing these proceedings in bankruptcy, that the effect of the injunction might be done away with, and Lenfestey again put in possession of the firm property. That Thompson and Lenfestey were acting in collusion for the purpose of defrauding him (Hill), and that Thompson had taken from Lenfestey a mortgage upon the firm property, and that all these facts were kept from Hill's knowledge by both Thompson and Lenfestey.

The case was tried in the District Court by jury. Upon the trial, the petition was read to the jury, and the petitioners case then rested. The District Court refused to permit respondent Hill to cross-examine the petitioner upon the facts set forth in the petition, and ruled out as immaterial all evidence tending to prove the matters

specially alleged in the answer as before mentioned, and by direction of the District Judge, the jury rendered a verdict of guilty.

The judgment entered upon that verdict was affirmed on error by the Circuit Court, and the same now comes here on error to said Circuit.

BRIEF.

FIRST.

The Circuit Court erred in sustaining the ruling of the District Court, that if the respondent calls the petitioner as a witness, he calls him as his own witness.

After reading the petition to the jury, petitioner rested his case; thereupon the respondent asked that the petitioner be sworn, that he might be cross-examined as to the facts set forth in his petition, upon which request the District Judge ruled as above.

This we submit was erroneous. This was a trial after the course of the Common Law. The defendant had the right, after the examination-in-chief of the plaintiff, to cross-examine him for the purpose of contradicting or explaining his testimony-in-chief. And it can make no difference that the testimony-in-chief of the plaintiff was first put upon paper and presented in that form.

SECOND.

The Circuit Court erred in sustaining the rulings of the District Court, upon the rejection of the evidence referred to in the second and third assignments of error in said Circuit Court. Record, p. 19.

These rulings give rise to the single question, viz:

If Thompson and Lenfestey, acting in collusion, succeeded in inducing the creditors of the firm to assign to Thompson a greater portion of the debts of the firm, so that he might throw the firm into bankruptcy, and then, being the holder of such a portion of the claims so obtained, he could control the appointment of assignee; and he acted for that purpose, and for the purpose of avoiding the injunction issued by the State Court—is Thompson such a creditor as can maintain a petition under Sec. 5023 of the bankrupt act?

If his claims so obtained are not provable claims under the act, then the offered evidence was material, and the error assigned is fatal.

We submit that this offered evidence tended to show that Thompson procured these claims expressly "*for the purpose of influencing the proceedings under the act;*" and therefore they were not provable claims.

Bankrupt Act, Sec. 5077.

THIRD.

The Circuit Court erred in sustaining the rulings of the District Court upon the rejection of the evidence referred

to in the fourth, fifth and sixth assignments of error, in said Circuit Court. Record, p. 19.

These rulings give rise to the question, viz:

Did this offered evidence tend to show that Thompson by acting in collusion with one of the members of said firm (Lenfestey), or by his conduct in regard to the matter, had placed himself in such a position as to estop him from urging the non-payment of said notes as an act of bankruptcy?

If so, it was material, and its rejection erroneous.

This offered proof was to the effect that Thompson represented Hill as insolvent, and thereby procured these notes. That he knew Hill was worth some $10,000 over and above his debts. That he knew that Hill was ignorant of the existence of these notes, and that, unless he kept him ignorant, he (Hill) would pay them. That he knew that the firm books did not show their existence, and that he had colluded with Lenfestey for the non-payment of the notes.

This, we submit, was such an assent upon the part of Thompson, as will estop him from urging the non-payment of said notes, and non-resumption, as an act of bankruptcy.

Bump on Bankruptcy, p. 401.
Perry vs. Langley, 1 B. R. 559.
(S. C.) 1 L. T. B. 34.
(S. C.) 7 A. L. Reg. 429.
In re Schuyler, 2 B. R. 549.
(S. C.) 2 L. T. B. 85.
(S. C.) 3 Ben. R. 200.

We submit that the proof offered tended to show that the conduct of said Thompson with his son-in-law, Lenfestey, was for the purpose of defrauding Hill. That the same was a fraud upon the bankrupt law, and the institution of these proceedings a misuse and abuse of the process of the Court. That the same ought to have been admitted, and, if believed by the jury, the petition ought to have been dismissed.

We therefore ask a reversal of the judgments of the Circuit and District Courts with costs against said defendant in error.

H. B. BROWN,
Attorney for Plaintiff in Error.

THE SUPREME COURT

OF THE

UNITED STATES.

HARVEY N. HILL, impleaded with
JAMES LENFESTY,
Plaintiff in Error,
vs.
WILLIAM F. THOMPSON,
Defendant in Error.

BRIEF OF C. A. KENT,

Of Counsel for Defendant in Error.

DETROIT:
WM. A. SCRIPPS, PRINTER, TRIBUNE BUILDING.
1876.

THE SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1876.

No. 195.

HARVEY N. HILL, impleaded with
JAMES LENFESTY,
Plaintiff in Error,
vs.
WILLIAM F. THOMPSON,
Defendant in Error.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT OF THE CASE.

In March, 1874, said Thompson filed a petition in involuntary bankruptcy, against Lenfesty and Hill, as partners, in the District Court of the United

States for the Eastern District of Michigan; alleging as an act of bankruptcy, the non-payment of their commercial paper for more than fourteen days. The commercial paper in question, consisted of two notes signed in the firm name; the aggregate amount of which was about three hundred and twenty-five dollars.

Hill answered said petition, denying the act of bankruptcy and demanding a jury trial. This answer admits the existence of the notes and of the partnership, nor does it claim any payment. It avers that a bill for the dissolution of the partnership had been filed in a State Court by Hill, against Lenfesty; that Hill knew nothing of the notes in question until the order to show cause was served upon him; that it was alleged in said bill that the firm had abundant assets to pay their debts; that Thompson, by untrue representations to the creditors of the firm, had bought up the claims at a large discount; that he bought the notes in question for the purpose of instituting bankruptcy proceedings, and so defeating the chancery suit for the settlement of the partnership affairs.

On the first day of May, 1874, the case was tried by jury in said District Court. On this trial, the statements in the petition were not disputed, but

said Hill asked the right to cross-examine petitioning creditor, Thompson. This the Court denied, but said he might be called by Hill as his own witness if he chose. Exception was taken to this ruling.

Said Hill then undertook to show that said Thompson purchased the notes in question to defeat said chancery suit, and by untrue representations as to the solvency of said Hill, which evidence was ruled out and exception taken.

Hill then undertook to show that at the maturity of the notes, and ever since, he had been entirely solvent, and had a large amount of assets in that judicial district; and that the firm had a large amount of assets in Detroit; that petitioner did not call upon Hill for the payment of the notes, and that Hill knew not of their existence until the proceedings in bankruptcy were begun. All this evidence was ruled out and exception taken. The jury found a verdict for the petitioning creditor. The case was taken by writ of error to the circuit of the United States for said Eastern District of Michigan, where the judgment of the district was affirmed. Thence it is brought here by writ of error.

On behalf of defendant in error, I contend, first, that the cause should be dismissed for want of juris-

diction; and second, that if the assignments of error are considered they will all be found utterly frivolous.

I.

The cause should be dismissed for want of jurisdiction. Whether any adjudication of bankruptcy can be reviewed in this Court is left unsettled by the case of

Insurance Company vs Comstock, 16 Wall. 258.

But surely no such cause can be brought to this Court unless "the matter in dispute shall exceed $2,000." Nothing can be disputed unless it is alleged in the petition and disputed in the answer. But the highest amount which can in any manner be said to be in dispute in this cause, is the amount of the notes, less than three hundred and thirty dollars, and even this is not in dispute since the validity of these notes is not questioned.

The aggregate of the debtors' debts or assets must be immaterial. At the most, there cannot be said to be any dispute about them.

II.

The assignments of error are all frivolous. When, as in this case, the allegations of the petition are undisputed, an attempt to prevent an adjudication by proof of other facts, is in effect an attempt to amend the bankrupt act, the law provides what shall constitute an act of bankruptcy and requires it to be set up in the petition.

The respondents admitting the truth of the facts alleged, disputes the legal effect which the law gives them, by reason of some other facts not mentioned in the law at all. This cannot be done.

In accordance with the rule, previously established in that Court (8 B. R. 514), Judge Longyear held, that the petition properly verified made out a *prima facie* case. To this rule, no exception was taken. But Hill's counsel demanded that Thompson should be called to be cross-examined. The Court ruled, that if called by the defence, he should be treated as their witness. To this ruling, exception was taken. This ruling seems clearly right; but if otherwise, it was a question of practice, discretionary with the Court below.

The next two assignments of error are for the

exclusion of evidence tending to show that Thompson purchased the notes, on which the petition was based, to avoid the effect of an injunction in the State Court. Certainly the existence of the suit in the State Court did not take away the jurisdiction of the Bankruptcy Court. A creditor still had a right to file his petition against the firm, and so his motive must be immaterial.

The fourth and fifth assignments of error are based on the exclusion of evidence, tending to show alleged misrepresentations made by Thompson when he purchased the notes in question. This is a matter between Thompson and the one from whom he purchased.

The last assignment of error is based on the exclusion of evidence tending to show the solvency of the firm, and especially of Hill.

If such evidence could defeat an adjudication, it would make a complete change in the law. If the respondents were so rich, why didn't they pay their debts and so get rid of all proceedings.

None of the assignments of error seem worthy of serious discussion, and either the case must be dismissed as improperly brought here or the judgment below must be affirmed with costs.

C. A. KENT,

Of Counsel for Defendant in Error.